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PATENT
 Docket No.: FAN-052-00



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:
 Holland et al.

Entitled: SUPPORT STAND FOR HOLDING
 DISPLAY ITEMS

Serial No.: 08/992,504

Filing Date: December 17, 1997

: Group Art Unit: 3632
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 : Examiner: A. Wujciak
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AMENDED APPEAL BRIEF IN RESPONSE TO
NOTICE OF NON-COMPLIANCE WITH 37 §CFR 1.192(C)

Hon. Assistant Commissioner for Patents
 Washington, D.C. 20231

Sir:

In response to the Notice of Non-Compliance with 37 §CFR 1.192(c) dated May 12th, 2003, the appellants hereby provide an amended Appeal Brief and additional copies of the claim appendix.

REMARKS

The following discussion provides an amended Appeal Brief in response to the Notice of Non-Compliance with 37 §CFR 1.192(c) dated May 12th, 2003. It is believed that this amended Appeal Brief fully complies with the requirements under 37 §C.F.R 1.192(c).

REAL PARTY IN INTEREST

The subject application is owned by Edward W. Holland and Marie L. Anderson of Newbury Park, California.

RELATED APPEALS AND INTERFERENCES

This corrected appeal brief is provided in response to a Notice of Non-Compliance with 37 §CFR 1.192(c) dated May 12th, 2003. The Notice of Non-Compliance was received in response to a supplemental appeal brief filed concurrently with a request to reinstate an appeal under 37 C.F.R. § 1.193(b)(2) on February 25th, 2003. The original appeal was filed in this case on September 3, 2002, and received by the USPTO on September 6, 2002. The appellants hereby incorporate the entire prior supplemental appeal and earlier appeal by reference, as the appellants feel that the majority of the arguments offered by the Examiner in this case were simply restated in the office action of November 19, 2002 rather than actually addressing new grounds of rejection.

STATUS OF CLAIMS

Claims 75 through 94 represent all claims currently pending in the application. These claims are provided for reference in the attached Appeal Brief Appendix. The rejection of claims 75-77, 81-82, and 86-93, and objection to claims 78-80, 83-85, and 94 are hereby appealed.

STATUS OF AMENDMENTS

No amendments are currently pending.

SUMMARY OF THE INVENTION

Appellants' invention is embodied in a support stand for holding flat or planar items in a vertical position. In general, as illustrated by Figure 1A and Figure 2, the support stand includes a flat, planar, rigid base 10, a pair of support members, 20 and 24, disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other. Further, a first support member 20 of the pair of support members, 20 and 24, is slidably engaged with the top surface of the base 10 such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member. In addition, the slidably engaged first support member 20 includes a securing apparatus 18 capable of releasably securing the first support member to the base 10 so as to prevent relative motion between that member and the base.

In another embodiment of the support stand, as illustrated by Figure 1A, the slidably engaged first support member 20 comprises an L-shaped bracket having a first leg and a second leg, with the first leg extending substantially perpendicular to the base 10 and having a face which forms the planar holding surface of the first support member, and the second leg having a face which is slidably engaged with the top surface of the base. In related embodiments, the second leg of the slidably engaged first support member 20 includes a slot 26 oriented so as to be substantially perpendicular to the face forming the planar holding surface of that support member. In one embodiment, a threaded pin 14 extends substantially perpendicular from the top surface of the base 10, with a distal end of the threaded pin extending through the slot of the support member 20. In this embodiment, a threaded knob 18 is threadably engaged with a distal end of the threaded pin 14. Consequently, when the threaded knob 18 is tightened, the second leg of the first support member 20 is compressed against the upper surface of the base 10, thereby preventing relative motion between the first support member and the base. Conversely, when the threaded knob 18 is loosened, relative motion between the support member 20 and the base 10 is possible.

In still another embodiment, the base 10 includes a second pin 12 protruding substantially perpendicular from the top surface of the base. This second pin 12 has a distal end that extends into the slot 26 of the first support member 20, thereby preventing rotation of the first support member about the threaded pin 14 while also serving to limit the linear travel of the first support member relative to the base 10. In related embodiments, the second support member 24 is substantially a mirror image of the first support member 20. Consequently, as described above for the first support member 20, in this embodiment, the second support member 24 is also slidably engaged with the base 10, and may include any of the embodiments described with relation to the first support member. Alternately, as illustrated by Figure 1A, the second support member 24 is permanently affixed to the base.

The foregoing description of the support stand is summarized from the description of the support stand beginning on Page 6, line 1 of the substitute specification provided as Amendment B, filed on June 26, 2000, and continuing through Page 8, line 19 of the substitute specification provided as Amendment B.

ISSUES

A Request for Reinstatement of Appeal and a supplemental Appeal Brief under 37 §CFR 1.193(b)(2) were filed with the USPTO on February 25th, 2003 following reopening of prosecution in a new Non-Final Office Action by the Examiner dated November 19, 2002. The Examiner responded on May 12th, 2003 with a Notice of Non-Compliance with 37 §CFR 1.192(c). The Examiner states that that the following deficiencies existed in the Supplemental Appeal Brief of February 25th, 2003:

1. "A single ground of rejection has been applied to two or more claims in this application, and the brief includes the statement required by 37 §CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief."

2. "The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 §CFR 1.192(c)(9))."

In support of the first deficiency noted above, the Examiner states that "[t]he applicant chose group 1 with claims 75-91 and group 2 with claims 92-94 to stand or fall together. Since the applicant chose group 1 and group 2 to stand or fall together, the applicant should only argue on the independent claim from each groups. In this brief, the applicant argues claims 75, 76, 77, 86, 88, 89-93 seperately [sic]."

The appellants believe that each of the argued points with respect to each of the rejected claims have substantial bearing on this appeal, and should therefore be considered. Consequently, in this amended appeal, rather than limit the argument to the independent claims, the Applicants have amended the standing of the claims with respect to which claims stand or fall together, so that the Examiners rejections may be considered in their entirety.

With respect to the second deficiency noted above, it should be understood that the original Appeal of September 3, 2002 included an Appeal Brief Appendix containing a complete and correct copy of the claims, in triplicate, which the Applicants incorporated by reference in the Supplemental Appeal Brief filed February 25th. Apparently, the Examiner felt that the previously filed Appeal Brief Appendix did not apply to the Request for Reinstatement of Appeal and the supplemental Appeal Brief. Therefore, to address this issue, the Applicants have again attached that same Appeal Brief Appendix containing a complete and correct copy of the claims, in triplicate, to this amended Appeal Brief.

The following paragraphs provide an overview of additional issues in this appeal raised during the Examiners prior responses.

In particular, following a final Office Action dated April 5, 2002, appellants filed an appeal on September 3, 2002. This appeal brief was received by the USPTO on

September 6, 2002. In response to the appellant's appeal brief, the Examiner withdrew his final rejection and reopened prosecution of this case with a non-final Office Action dated November 19, 2002. The Examiner states that new grounds of rejection are the basis for the new rejections provided in the Office Action of November 19, 2002.

In particular, in the Office Action of November 19, 2002, claims 75-77, 81-82, 86-87, and 92-93 were rejected under 35 U.S.C. §102(b) as being anticipated by **Dumben** (U.S. Patent Number 1,780,782). Next, claims 88 and 90-91 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Dumben**. Claim 89 was rejected under 35 U.S.C. §103(a) as being unpatentable over **Dumben** in view of **Hunter** (U.S. Patent Number 4,966,340). Finally, claims 78-80 and 83-85 and 94 were objected to as being dependant upon a rejected base claim.

GROUPING OF CLAIMS

Claims 75, 77-81, and 89-91 stand or fall together. Claim 76 stands or falls alone. Claims 82-85 stand or fall together. Claims 86-88 stand or fall together. In addition, claims 92-94 also stand or fall together. ***Note that this grouping of claims is provided to address the Examiners Notice of Non-Compliance with 37 §CFR 1.192(c) wherein the Examiner suggested that the appellants can not group claims as standing together and then argue their patentability separately. Consequently, because the patentability of several of the claims is argued separately in order to fully address the Examiner's rejections, the appellants have provided the above amended claim groupings.***

THE EXAMINER'S RATIONALE

The Examiner's rationale for the rejection of claims 75-77, 81-82, 86-87, and 92-93 under 35 U.S.C. §102(b) as being anticipated by **Dumben** was stated in the Office Action of November 19, 2002 as follows:

"Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5) and a pair of support members (17) disposed on a top surface of the base. Each support member having a single, planar holding surface (figure 2, a). The support members are substantially perpendicular to the top surface of the base. The support members are slidably engaged (16) with the top surface of the base. A securing apparatus (12, 19) capable of releasably securing the support members (17). The second support member (other support member transverse from the first support member) is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base. The support members comprise an L-shaped bracket wherein a first leg (17) of bracket extends substantially perpendicular to the base and having a face forms the planar holding surface. A second leg (16) of bracket has a face, which is slidably engaged with the top surface of base. The base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over. The top and bottom surfaces are in elongated rectangular-shapes. The surfaces are perpendicular to the support members (figure 2)."

The Examiner's further rationale for the rejection of claims 92 and 93 under 35 U.S.C. §102(b), as being anticipated by **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

"In regard to claims 92 and 93, the support member is disposed on a top surface of the base having a single planar holding surface. The support member is slidable inward or outward on the base. The stand comprises a first securing apparatus 19 capable of releasably securing the support member to the base so as to prevent relative motion between the member and the base, and a second securing member (the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side) for attaching the support

member to an item placed against the planar holding face of the support member.”

The Examiner’s rationale for the rejection of claim 88 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

“In regards to claim 88, Dumben teaches the top and bottom surfaces of the base but fails to teach they are in a square shape. It would have been obvious to the designer's choice to have modified the elongated rectangular to a square shape to provide an ornament appearance. Appellant has asserted no unexpected criticality in making the base square shaped.”

The Examiner’s rationale for the rejection of claims 90-91 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

“In regard to claim 90-91, Dumben teaches the base and support members being made of metal (col.1, line 33-40) but fails to teach they are coated with a rust-resistant plating material. It would have been obvious to the designer's choice to have added the rust-resistant plating material to the base and support members to prevent the corrosion of rust. Appellant has asserted no unexpected criticality in making the use of rust resistant coating.”

The Examiner’s rationale for the rejection of claim 89 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Hunter**, was stated in the Office Action of November 19, 2002 as follows:

“Dumben teaches the base but fails to teach the base having at least two wheels. Hunter teaches base (40) having at least two wheels (30). It

would have been obvious for one of ordinary skill in the art at the time the invention was made to have added Dumben base with wheels as taught by Hunter to provide a convenience in moving the base of Dumben from one location to another.”

Finally, in the Office Action of November 19, 2002, the Examiner indicated that claims 78-80, 83-85 and 94 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

ARGUMENT

By way of introduction to the following discussion, the appellant’s respectfully contend that rather than providing new grounds of rejection in the Office Action of November 19, 2002, the Examiner has simply restated the same arguments provided in support of the original rejections offered in the Office Actions of June 19, 2001, and April 15, 2002. Consequently, the arguments filed by the appellant on October 18, 2001, and the arguments filed by the appellant on September 3, 2002 in the aforementioned appeal, in response to the two aforementioned Office Actions, again apply to the “new grounds of rejection” offered by the Examiner in the new Office Action of November 19, 2002. However, for purposes of clarity, the same arguments will again be addressed fully in this amended appeal.

I. The 35 U.S.C. §102(b), rejection of claims 75 and 92.

In the current Office Action, the Examiner again contends that ***Dumben*** describes all of the claimed elements of the appellants’ invention. However, as noted in the previously filed Appeal, and in accordance with the following discussion, the appellants contend that the Examiner has incorrectly characterized several portions of the ***Dumben*** reference in an attempt to show equivalence to elements of the appellants support stand.

Note that the examiner addresses his rejection of claims 75 and 92 in a combined argument; consequently, the appellants will address the rejection of both claims in the same manner on a point-by-point basis. In particular, with respect to the rejection of Independent claims 75 and 92, the Examiner again first suggests that "Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5)..." Further, in the Examiner's response to the appellants' appeal filed on September 3, 2002, the Examiner states: "The examiner believes that on figure 1 in Dumben, the invention shows that the top surface the base is a flat or planar surface. The flat surface on the base allows the support member(s) to slide along the top surface of the base. If the surface on the base were not flat, it would be impossible to move the supporting member."

However, as noted by the appellants in the response to the each of the two previous Office Actions, the **Dumben** base (5), as illustrated by figures 2-6, is neither flat, nor planar. In fact, as described by **Dumben** page 1, lines 60-65, the **Dumben** base is actually a hollow housing having supporting legs (6) (see also figures 2-3). While the **upper surface** of the **Dumben** base (5) is clearly flat as suggested by the Examiner, the base itself, having supporting legs (6) in each corner, is not itself flat and planar. In fact, one of the stated advantages of the appellants support stand, as discussed on page 3, line 17-19 of the substitute specification provided as Amendment B, is that the appellants support stand has a "continuous ground engaging flat base... to hold a flat display item, while remaining unobtrusive, low to the ground, and presenting no trip hazard to foot traffic." Clearly, the **Dumben** base (5) having legs (6) extending from each corner of the base is neither flat nor planar. Consequently, because of the **Dumben** supporting legs (6), the **Dumben** base (5) is **incapable** of achieving one of the stated advantages of the appellants support stand, namely, the ability to provide a **continuous ground engaging flat base** which does not present a trip hazard to foot traffic.

Next, the examiner suggests that **Dumben** includes "a pair of support members (17) disposed on a top surface of the base." Further, in the Examiner's response to the

appellants' appeal filed on September 3, 2002, the Examiner states the following: "The examiner believes that on Figure 7 in *Dumben*, the invention shows that the support member is disposed on the top surface of the base. The supper [sic] member has a planar surface **with four edges, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7**. Both edges provide a stable support for the support member from wobbling when changing the location of the support member." (emphasis added)

As noted above, the Examiner suggests that the "supper [sic] member has **four edges**, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7" (emphasis added). It is unclear exactly what the "supper member" is that is being referred to by the Examiner. Nevertheless, for the sake of argument, it will be assumed that the Examiner is referring to one of the *Dumben* "book ends" (17) as illustrated by figure 7 of the *Dumben* reference. However, it should be noted that *Webster's Encyclopedic Unabridged Dictionary of the English Language*, 2001, Thunder Bay Press, defines "edge" as "**a line or border at which a surface terminates.**" Consequently, as **clearly** illustrated by figure 7, the *Dumben* "book end" (17) has more than four edges.

In fact, it is clear that the bottom section of the *Dumben* "book end" (17) has a center section that extends **into** the base (5) and is in contact with block (16). Clearly, in view of figure 7, the bottom portion of the *Dumben* "book end" (17) has **five** separate planar surfaces, and thus a plurality of "edges." In particular, from right to left, the *Dumben* "book end" (17) shows: 1) a first flat area above the top of the base (5); 2) a second small area at a right angle to the first area, and extending down into the base; 3) a third flat area at a right angle to the second flat area, and disposed within the slot (8) of the base (5); 4) a fourth small area at a right angle to the third area, and extending from the third area towards the top of the base; and 5) a fifth flat area extending from, and at a right angle to the fourth flat area, above the top of the base (5). Consequently, because just the bottom of the *Dumben* "book end" (17) has five separate planar surfaces connected at right angles, and because the *Dumben* "book end" (17) is a

three-dimensional structure, the bottom section of the **Dumben** “book end” (17) has **at least 16 edges**.

Therefore, in view of the above discussion, the Examiner’s statement that “**the two edges on the bottom of the planar surface are resting on the base as shown in figure 7**” is unclear on its face.

However, regardless of the Examiner’s apparent misuse of the term “edges,” and in contrast to the position advanced by the Examiner, the appellants again contend that the **Dumben** “book ends” (17) are not in fact disposed on a top surface of the base, as described and claimed by the appellants. In particular, as clearly illustrated by figures 1, 3, 4, 5, 6 and 7 of the **Dumben** reference, and as repeatedly explained by the appellants, the pair of “book ends” (17) are **not** disposed on the top surface of the base, as described and claimed by the present invention. In fact, as illustrated by figures 1, 3, 4, 5, 6, and 7, and as explained on page 2, lines 5-22 of the **Dumben** reference, the **Dumben** book ends (17) are actually coupled to and supported by blocks (16) that are slidably mounted within a longitudinal slot (8) in the base (5). These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the **lower surface** of the base (5).

In contrast, at least one of the appellants support members, 20 and 24, has a “flat planar surface to communicate with base plate 10.” Further, “support 24 **lies flat on top of base plate 10**...” (emphasis added) as described on page 6, lines 12-18 of the substitute specification provided as Amendment B. In addition, also unlike the **Dumben** book ends (17), the appellants support members, 20 and 24, do **not** extend **into** the base as illustrated by figure 7 of the **Dumben** reference.

Therefore, in view of the preceding discussion, it is clear that **Dumben** fails to teach the appellants claimed “pair of support members **disposed on a top surface of the base**” (emphasis added) as described and claimed by the appellants.

Next, the examiner suggests that the **Dumben** “support members are slidably engaged (16) with the top surface of the base.”

However, in contrast to the position advanced by the Examiner, the appellants again contend that the **Dumben** reference clearly shows in figures 1 and 3-7 that the book ends (17) are supported by **blocks (16)** which are themselves slidably engaged **within a longitudinal slot (8)** in the base (5), see **Dumben** page 2, lines 5-10. Further, the **Dumben** blocks (16) are not slidably engaged with the surface of the base (5), as they are clearly disposed within the longitudinal slot (8) in the base as illustrated by figures 4, 5 and 6. In addition, as illustrated by figure 7, a portion of the **Dumben** book ends (17) actually extends **into** the slot (8) in the base (5). Consequently, it is clear that the **Dumben** book ends (17) are coupled to “slidable blocks” (16) which are in turn **slidably disposed within a slot (8) in the base (5)**. In contrast, at least one support of the present invention is clearly “**slidably engaged with the top surface of the base,**” and **not** within a slot within the base as described by **Dumben**.

Next, the examiner suggests that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members” (emphasis added). Further, in the Office Action dated November 19, 2002, the examiner responded to the appellants arguments filed on September 3, 2002 by stating:

“on pages 9-11, the applicant argues that Dumben screws 19 do not prevent relative motion between the base and the book ends. The screw (19) in Dumben’s invention shows that the screw keeps the bookends within the base when changing the location of the book ends. **The bookends would not slide out of the base when moving the ends. The examiner believes that if the screw (19) are screwed tighten against the sliding block (12), it would prevent the book ends from sliding.**” (emphasis added)

As noted above, the Examiner states that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members (17),” However, as explained by the appellants in the prior appeal filed September 3, 2002, it is clear from a reading of the **Dumben** reference that elements (19) of **Dumben** are actually screws which are “employed for securing the slidable blocks 16 and the slidable floating member 12 to the bracing members 18 which may be secured to the book end supports 17...” (See **Dumben** page 2, lines 15-18). Clearly, the **Dumben** screws are **not** used in the manner suggested by the Office Action.

In particular, the **Dumben** screws (19) simply hold together elements that are slidably disposed within and under the slot (8). Further, while it is true that such screws releasably secure the slidable blocks (16) and the slidable floating member (12) to the bracing members (18), it should be noted that apparent effect of removing these screws (19) would be to cause each bracing member (18) to become unsecured from its support structure, thereby reducing any lateral support of the book ends (17). Clearly, the **Dumben** screws (19) do not operate as suggested by the Office Action, as they simply do **not** prevent relative motion between the base (5) and the book ends (17). Further, as clearly illustrated by figures 4, 5 and 6, the **Dumben** screws (19) already appear to be tightened as much as they can be without the heads of those screws actually extending **into** the surface of the slidable floating member (12). Thus, the appellants strongly disagree with the Examiner’s suggestion that tightening the **Dumben** screws (19) “**would prevent the book ends from sliding.**” (emphasis added).

In stark contrast, as claimed by independent claims 75 and 92, the appellants describe a “securing apparatus capable of releasably securing the support member to the base **so as to prevent relative motion between that member and the base**” (emphasis added). The appellants securing apparatus prevents **any** relative motion between the support member and the base, while the **Dumben** screws (19) in combination with the **Dumben** slidable floating member (12) serve only to provide a

support structure for the **Dumben** book ends (17) as described above. Clearly, the **Dumben** reference does not teach the appellants securing apparatus.

Next, with respect to claim 92, the Examiner suggests that “[t]he stand comprises a **first securing apparatus 19 capable of releasably securing the support member to the base so as to prevent relative motion between the member and the base**, and a **second securing member** (the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side) **for attaching the support member to an item placed against the planar holding face of the support member.**”

However, as discussed above, the Examiner is again incorrect in his interpretation of the function of the **Dumben** screw (19). In fact, as discussed above, screw (19) actually serves to secure the slidable block (12) to the support brace (18). Clearly, as discussed above, and in stark contrast to the position advanced by the Examiner, the **Dumben** screw (19) is **incapable** of “releasably securing the support member to the base so as to prevent relative motion between the member and the base.”

Further, the appellants strongly disagree with the Examiner’s characterization of the second of the two **Dumben** bookends (17) as being a “securing member... for attaching the support member to an item placed against the planar holding face of the support member.” The Examiner offers the explanation that “the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side” as evidence that the **Dumben** bookend (17) is capable of being attached to an item being held between the bookends. However, the appellant’s respectfully suggest that the **Dumben** reference in fact provides no mechanism, teaching, or suggestion for actually attaching an item being held between the bookends (17) to one of those bookends. In fact, the appellants respectfully suggest that the Examiner’s argument with respect to this issue has no support whatsoever in view of the plain meaning of the **Dumben** reference.

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the appellants claimed invention. In fact, the appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the **Dumben** reference which in themselves should render the rejections under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the appellant's position that rejected independent claim 75, and dependent claims 76-77, 81-82, and 86-87, are not described by the **Dumben** reference, and as such are patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of independent claim 75, i.e.,

Claim 75:

"a flat, planar, rigid base;

a pair of **support members disposed on a top surface of the base...**,
and wherein a first of the pair of support members is **slidably engaged with the top surface of the base...**; and

a securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base." (emphasis added)

As such, the appellants respectfully traverse the Examiner's rejection of independent claim 75, and of dependent claims 76-77, 81-82, and 86-87 under 35 U.S.C. §102(b) in view of the **Dumben** reference.

Similarly, also in view of the foregoing argument, it is the appellant's position that rejected independent claim 92, and dependent claim 93, are not described by the **Dumben** reference, and as such are patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of independent claim 92, i.e.,

Claim 92:

“a flat, planar, rigid base;

a single support member disposed on a top surface of the base...

slidably engaged with the top surface of the base...;

a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base; and

a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position.” (emphasis added)

As such, the appellants respectfully traverse the Examiner's rejection of independent claim claim 92, and thus of dependent claim 93 under 35 U.S.C. §102(b) in view of the ***Dumben*** reference.

II. The 35 U.S.C. §102(b), rejection of claim 76.

With apparent reference to claim 76, the Examiner simply states that the “second support member... is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base.” Further, in the Office Action dated November 19, 2002, the examiner responded to the appellants arguments filed on September 3, 2002 by stating:

“In regards to the applicant's argument on page 11, the applicant argues that Dumben does not teach the second support member being permanently affixed to the base and slidably engages with the surface of the base. On figure 7 of Dumben's invention shows the slidable floating block (12) secures the second support member within and on the base. The slidable floating block is connected to a slidable block (16), which allows the support member to slide along the top surface of the base. The examiner believes that Dumben teaches the second support member

being permanently affixed to the base and slidably engages with the surface of the base.”

However, in stark contrast to the position advanced by the Examiner, and as repeatedly explained by the appellants, the common usage of the term “permanently affixed” negates the possibility that an object is also simultaneously “slidably engaged.” Specifically, the appellants contend that an object can be either “permanently affixed,” or “slidably engaged,” but not both at the same time. Further, it is clear from figure 1 and figures 3-6 of the **Dumben** reference, as well as from the text of the **Dumben** reference that the **Dumben** book ends (17) are adjustable along the length of the slot (8) in the base (5), and that neither book end is permanently affixed to the base.

Further, because the claims must be interpreted in light of the appellants’ specification, it is clear that the “permanently affixed” and “slidably engaged” states are **mutually exclusive embodiments** of the appellants support stand. In particular, as illustrated by figure 1A, and described on page 6, lines 8-11 of the substitute specification provided as Amendment B, the permanently affixed support 20 is permanently attached to the base 10 and supported by a support rod 22 which is **welded** to both the base and the support. Clearly, this support 20 is **permanently affixed** to the base 10 while being **incapable** of slidable engagement with the base. Conversely, in an alternate embodiment, as illustrated by figure 2, and described on page 7, lines 12-13 of the substitute specification provided as Amendment B, both supports, 24, are in slidable “non-fixed” engagement with the base 10.

Consequently, the appellants respectfully suggest that the Examiner’s characterization of the **Dumben** reference is in error. Clearly, because the **Dumben** book ends (17) are adjustable along the length of the slot (8) in the base (5), neither book end is permanently affixed to the base. Therefore, the **Dumben** reference clearly fails to teach that “the second support member is permanently affixed to the base” as described and claimed by the appellants in claim 76.

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the appellants claimed invention. In fact, the appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the **Dumben** reference which in themselves should render the rejection under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the appellant's position that the rejected claim 76 is not described by the **Dumben** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 76, i.e.,

Claim 76:

“...second support member is ***permanently affixed to the base.***

(emphasis added)

As such, the appellants respectfully traverse the Examiner's rejection of claim 76 under 35 U.S.C. §102(b) in view of the **Dumben** reference.

III. The 35 U.S.C. §102(b), rejection of claim 82.

With apparent reference to claim 82, the Examiner suggests that a “second leg **(16)** of bracket has a face, which is slidably engaged with the top surface of base.”
(emphasis added)

However, as illustrated by figures 1, 4, 5, 6 and 7 of the **Dumben** reference, and as explained on page 2, lines 5-22 of the **Dumben** reference, the **Dumben** book ends (17) are actually coupled to and supported by **blocks (16)** that are slidably mounted ***within a longitudinal slot (8) in the base (5).*** These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the **lower surface** of the base (5). Therefore, it is clear that the slidable blocks (16) are ***not*** a second leg of the bracket, and that the slidable blocks (16) do ***not*** have a face that is “slidably engaged with the top surface of

base” as suggested by the Examiner. Consequently, the appellants respectfully suggest that the Examiner’s characterization of element 16 of the **Dumben** reference is in error.

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the appellants claimed invention. In fact, the appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the **Dumben** reference which in themselves should render the rejection under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the appellant’s position that the rejected claim 82 is not described by the **Dumben** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 82, i.e.,

Claim 82:

“... the second support member... **a second leg of which has a face which is slidably engaged with the top surface of the base.** (emphasis added)

As such, the appellants respectfully traverse the Examiner’s rejection of dependent claim 82 under 35 U.S.C. §102(b) in view of the **Dumben** reference.

IV. The 35 U.S.C. §102(b), rejection of claim 86.

With apparent reference to claim 86, the Examiner suggests that “[t]he base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over.”

However, as discussed above, and as previously explained by the appellants, element (6) of the **Dumben** reference actually comprises a set of four legs, with one leg

extending from each corner of the bottom surface of the base (5). Consequently, while the base (5) clearly has a bottom surface, it is **not** in contact with the ground to “prevent a display from tipping over.” Rather, it is the legs (6) which extend from the bottom of the base (5) which are in contact with the ground. Therefore, it is clear that **Dumben** does not teach that a base is in contact with the ground as described and claimed by the appellants.

Consequently, in view of the foregoing argument, it is the appellant’s position that the rejected claim 86 is not described by the **Dumben** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 86, i.e.,

Claim 86:

“... **wherein the base has a bottom surface which is in contact with the ground or floor**, and wherein the base is of sufficient size and shape so that whenever a display item is held in an upright position between the planar holding surfaces of the support members, it is **prevented from tipping over**.” (emphasis added)

As such, the appellants respectfully traverse the Examiner’s rejection of dependent claim 86, and thus of further dependent claim 87, under 35 U.S.C. §102(b) in view of the **Dumben** reference.

V. The 35 U.S.C. §103(a) rejection of claims 88 and 90-91.

With respect to the rejections of claims 88 and 90-91 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, it should be noted that claims 88 and 90-91 are dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, it is clear that **Dumben** fails to teach a number of the elements of claim 75, and that in fact, claim 75 of the appellants invention has been

shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no valid outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore, the appellants respectfully traverse the Examiner's rejection of claims 88 and 90-91 under 35 U.S.C. §103(a) in view of the above discussion.

VI. The 35 U.S.C. §103(a) rejection of claim 89.

Similarly, with respect to the rejections of claim 89 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Hunter**, it should be noted that claim 89 is dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, it is clear that **Dumben** fails to teach a number of the elements of claim 75, and that in fact, claim 75 of the appellants invention has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no valid outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore, the appellants respectfully traverse the Examiner's rejection of claims 89 under 35 U.S.C. §103(a) in view of the above discussion.

SUMMARY

For the foregoing reasons, it is submitted that the Examiner's rejection of Claims 75-77, 81-82, and 86-93 and objection to claims 78-80, 83-85, and 94 was erroneous. As such, reversal of the Examiner's decision is respectfully requested.

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PATENT
Docket No.: FAN-052-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Group Art Unit: 3632
Holland et al.	:	
	:	Examiner: A. Wujciak
Entitled:	:	
SUPPORT STAND FOR HOLDING	:	
DISPLAY ITEMS	:	
	:	
Serial No.:	:	
08/992,504	:	
	:	
Filing Date:	:	
December 17, 1997	:	

APPEAL BRIEF APPENDIX

The following Claims 75-94 represent all the claims involved in the appeal of the above-identified application and are provided in accordance with the requirements of 37 CFR 1.192(c)(7):

Claim 75. A support stand, comprising:

a flat, planar, rigid base;

a pair of support members disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other, and wherein a first of the pair of support members is slidably engaged with the top surface of the base such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member; and

a securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base.

Claim 76. The support stand of Claim 75, wherein the second support member is permanently affixed to the base.

Claim 77. The support stand of Claim 75, wherein the first support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the first support member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 78. The support stand of Claim 77, wherein the second leg of the first support member comprises a slot oriented so as to be substantially perpendicular to the face forming the planar holding surface of the first support member, and wherein the securing apparatus comprises,

a threaded pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends through the slot of the first support member, and

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the first support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the first support member against the top surface of the base, prevents the first support member from sliding in relation to the base.

Claim 79. The support stand of Claim 78, further comprising a second pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends into the slot of the first support member, whereby the second pin prevents rotation of the first support member about the threaded pin.

Claim 80. The support stand of Claim 79, wherein the second pin is disposed further outward on the base than the threaded pin such that the second pin limits how far the first support member can be slid toward the second support member and the threaded pin limits how far the first support member can be slid away from the second support member.

Claim 81. The support stand of Claim 75, wherein the second support member is also slidably engaged with the top surface of the base such that the holding surface of the second support member can be slid toward or away from the holding surface of the first support member, and wherein the support stand further comprises a second securing apparatus capable of releasably securing the second support member to the base so as to prevent relative motion between the second member and the base.

Claim 82. The support stand of Claim 81, wherein the second support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the second support member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 83. The support stand of 82, wherein the second leg of the second support member comprises a slot oriented so as to be substantially perpendicular to the face forming the planar holding surface of the second support member, and wherein the second securing apparatus comprises,

a threaded pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends through the slot of the second support member, and

a threaded knob which is threadably mated to the threaded pin and which in a disengaged mode allows the second support member to be slid in relation to the base, and in an engaged mode wherein the knob is rotated down on the pin so as to compress the second leg of the second support member against the top surface of the base, prevents the second support member from sliding in relation to the base.

Claim 84. The support stand of Claim 83, further comprising a second pin protruding substantially perpendicular from the top surface of the base which has a distal end that extends into the slot of the second support member, whereby the second pin prevents rotation of the second support member about the threaded pin.

Claim 85. The support stand of Claim 84, wherein the second pin is disposed further outward on the base than the threaded pin such that the second pin limits how far the second support member can be slid toward the first support member and the threaded pin limits how far the second support member can be slid away from the first support member.

Claim 86. The support stand of Claim 75, wherein the base has a bottom surface which is in contact with the ground or floor, and wherein the base is of sufficient size and shape so that whenever a display item is held in an upright position between the planar holding surfaces of the support members, it is prevented from tipping over.

Claim 87. The support stand of Claim 86, wherein the top and bottom surfaces of the base have an elongated rectangular-shape and a longitudinal axis which extends substantially perpendicular to the planar holding surfaces of the support members.

Claim 88. The support stand of Claim 86, wherein the top and bottom surfaces of the base have a substantially square shape.

Claim 89. The support stand of Claim 75, further comprising at least two wheels, each of which is attached to a bottom surface of the base, so as to allow the support stand to be rolled about.

Claim 90. The support stand of Claim 75, wherein the base is made of metal and coated with a rust-resistant plating material.

Claim 91. The support stand of Claim 75, wherein each support member is made of metal and coated with a rust-resistant plating material.

Claim 92. A support stand, comprising:

a flat, planar, rigid base;

a single support member disposed on a top surface of the base having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base, and wherein the support member is slidably engaged with the top surface of the base such that the holding surface of the support member can be slid inward or outward on the base;

a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base; and


a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position.

Claim 93. The support stand of Claim 92, wherein the support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the support member, and a second leg of which has a face that is slidably engaged with the top surface of the base.

Claim 94. The support stand of Claim 93, wherein first leg of the support member comprises at least one through-hole disposed adjacent the distal end of the leg, and wherein the second securing apparatus comprises a screw, the head of which is retained by the at least one through-hole and the shaft of which is driven into the item being held in an upright position by the support stand.

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